6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R05-OAR-2009-0965; FRL-9792-4]

Approval of Air Quality Implementation Plans; Indiana; Disapproval of State Implementation Plan Revision for ArcelorMittal Burns Harbor

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: On December 10, 2009, Indiana submitted a request for a revision to its sulfur dioxide (SO_2) state implementation plan (SIP) for the ArcelorMittal Burns Harbor facility in Porter County, Indiana. This revision would remove the SO_2 emission limit for the blast furnace gas flare at the facility. For the reasons discussed below, EPA is proposing to disapprove this requested revision.

DATES: Comments must be received on or before [INSERT DATE 30 DAYS AFTER PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: Submit your comments, identified by Docket ID No. EPA-R05-OAR-2009-0965, by one of the following methods:

1. www.regulations.gov: Follow the on-line instructions for submitting comments.
2. Email: blakley.pamela@epa.gov.
3. Fax: (312) 692-2450.

4. Mail: Pamela Blakley, Chief, Control Strategies Section, Air Programs Branch (AR-18J), U.S. Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604.
5. Hand Delivery: Pamela Blakley, Chief, Control Strategies Section, Air Programs Branch (AR-18J), U.S. Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604. Such deliveries are only accepted during the Regional Office normal hours of operation, and special arrangements should be made for deliveries of boxed information. The Regional Office official hours of business are Monday through Friday, 8:30 AM to 4:30 PM, excluding Federal holidays.

Instructions: Direct your comments to Docket ID No. EPA-R05-OAR-2009-0965. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at www.regulations.gov, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through www.regulations.gov or e-mail. The www.regulations.gov website is an "anonymous access" system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment.

If you send an e-mail comment directly to EPA without going through www.regulations.gov your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: All documents in the docket are listed in the www.regulations.gov index. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in www.regulations.gov or in hard copy at the Environmental Protection Agency, Region 5, Air and Radiation Division, 77 West Jackson Boulevard, Chicago, Illinois 60604. This Facility is open from 8:30 AM to 4:30 PM, Monday through Friday, excluding Federal holidays. We recommend that you telephone Mary Portanova, Environmental Engineer, at

(312) 353-5954 before visiting the Region 5 office.

FOR FURTHER INFORMATION CONTACT: Mary Portanova, Environmental Engineer, Control Strategies Section, Air Programs Branch (AR-18J), Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 353-5954, portanova.mary@epa.gov.

SUPPLEMENTARY INFORMATION: Throughout this document whenever "we," "us," or "our" is used, we mean EPA. This supplementary information section is arranged as follows:

I. What should I consider as I prepare my comments for EPA?

When submitting comments, remember to:

1. Identify the rulemaking by docket number and other identifying information (subject heading, Federal Register date, and page number).

2. Follow directions - EPA may ask you to respond to specific questions or organize comments by referencing a Code of Federal Regulations (CFR) part or section number.

3. Explain why you agree or disagree; suggest alternatives and

substitute language for your requested changes.

4. Describe any assumptions and provide any technical information and/or data that you used.

5. If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.

6. Provide specific examples to illustrate your concerns, and suggest alternatives.

7. Explain your views as clearly as possible, avoiding the use of profanity or personal threats.

8. Make sure to submit your comments by the comment period deadline identified.

II. What is the background for this action?

On December 10, 2009, the Indiana Department of Environmental Management (IDEM) submitted a request to EPA, asking EPA to approve a revision to its SO_2 SIP. This revision would amend 326 Indiana Administrative Code (IAC) 7-4-14, Porter County SO_2 Emission Limitations, by removing the SO_2 emission limit for the blast furnace flare at the ArcelorMittal Burns Harbor LLC (ArcelorMittal) steel mill. In Indiana's current SO_2 SIP, which EPA approved on January 19, 1989 (54 FR 2112), the blast furnace flare had a limit of 0.07 pounds of SO_2 per million British Thermal Units (lbs/mmBtu). The approved SO_2 SIP also contains SO_2 emission limits for a number of combustion units at

ArcelorMittal, including blast furnace stoves, coke battery underfire, and power station boilers. Indiana's December 10, 2009 SIP revision request did not alter these emission limits.

ArcelorMittal's blast furnace flare is used as a safety device to reduce excess pressure in the blast furnace gas lines and as a method for disposing of excess blast furnace gas. Blast furnace gas is generated during the process of iron production in the blast furnace. The gas is collected from the facility's blast furnace and used as fuel, along with coke oven gas and natural gas, in the facility's blast furnace stoves, power plant boilers, slab mill soaking pits, and coke batteries. It should be noted that the existing SIP flare limit does not restrict the total amount of blast furnace gas that may be burned in the flare, or limit the frequency or duration of the flare's usage. The actual SO_2 emissions from the flare are determined by the total amount of gases it burns, and the sulfur content of those gases.

III. What is EPA's evaluation of the State's submittal?

Section 110(l) of the Clean Air Act (CAA) states that the Administrator shall not approve a SIP revision if it would interfere with any applicable requirement concerning attainment of the national ambient air quality standards (NAAQS) and

reasonable further progress, 42 U.S.C. 7410(l). Under 40 CFR 51.112(a), each SIP must demonstrate that the measures, rules, and regulations it contains are adequate to provide for the timely attainment and maintenance of the NAAQS. For the reasons discussed below, EPA believes that the State has not demonstrated that this SIP revision submission satisfies the requirements for approval under section 110(l) of the CAA.

The State maintains that removing the blast furnace flare limit from the SIP will not result in or allow an increase in actual SO_2 emissions, and that the emission limit for the flare is redundant and unnecessary for continued protection of the SO_2 NAAQS. EPA disagrees with these claims. For the blast furnace flare limit to be considered redundant, the sulfur content of the blast furnace gas must be addressed elsewhere in the SIP, but this is not the case. There are limits on individual combustion sources that use blast furnace gas, such as the blast furnace C and D stoves and the power station boilers, in 326 IAC 7-4-14 (1)(B) and (C). These sources are allowed to use a combination of blast furnace gas and coke oven gas, and their emission limits reflect this combination. The emission limits in 326 IAC 7-4-14 (1)(B) and (C) do not specifically limit the sulfur content of either coke oven gas or blast furnace gas.

The State, in the August 8, 2007, Second Notice of Comment Period for the rulemaking action on the December 10, 2009, SIP

revision request, notes that "ISG Burns Harbor LLC1 states that the sulfur content present in raw materials processed at the blast furnace is highly variable. Because the nature of the steelmaking process requires a continuous addition of raw materials to the blast furnace, it is technically infeasible to manage the sulfur content of materials charged in the blast furnace to achieve compliance with the blast furnace flare SO_2 emission limit." If this variability provides for the production of blast furnace gas exceeding 0.07 lbs/mmBtu, and if some of this gas is occasionally flared, then the removal of the flare limit could result in and allow an increase in actual SO_2 emissions from the flare.

The State asserts that because the facility fully intends to use all the blast furnace gas it produces, the flare's emissions would be infrequent and therefore inconsequential. However, in a June 29, 2011, letter which IDEM forwarded to EPA, ArcelorMittal indicated that when a boiler or stove must be curtailed or shut down, some blast furnace gas may be redirected to the blast furnace flare. The letter also acknowledged that the flare is necessary for the safe operation of the blast furnace gas systems, as it is used to regulate pressure by accommodating gas surges, which could present safety risks at the boilers or stoves.

---

1 The Burns Harbor facility was operated by ISG Burns Harbor, LLC, in 2007.

EPA believes that unless gas pressure surges are impossible while the stoves and boilers are operating normally, or unless the stoves and boilers always revert to a lower rate of operation whenever a pressure surge occurs, the flare's emissions may not be negligible for SIP planning purposes. Since the stoves and boilers operate on a combination of blast furnace gas, coke oven gas, and natural gas, their full operating rates could be maintained with the other fuel gases during pressure surges that affect the flow of blast furnace gas and necessitate the use of the flare. Therefore, the December 10, 2009, SIP revision request would enable an increase in allowable emissions.

IDEM did not include a revised attainment demonstration of the SO_2 NAAQS with its December 10, 2009, submission. Instead, it relied on its 1988 demonstration of attainment, which included a detailed air dispersion modeling analysis of the steel mill. The 1988 modeling demonstration presumed that blast furnace gas and coke oven gas would be used together in the units at ArcelorMittal which are allowed to use both fuels. For example, the blast furnace stoves were modeled at an emission rate corresponding to 60% blast furnace gas usage and 40% coke oven gas usage. The SO_2 emission rate used for blast furnace gas combustion in the 1988 modeling analysis was 0.07 lbs/mmBtu. The blast furnace flare was modeled at its SIP emission limit of 0.07 lbs/mmBtu. IDEM used an emission rate of 1.96 lbs/mmBtu for

coke oven gas in the 1988 analysis.

IDEM asserts that the SO_2 SIP emission limits in 326 IAC 7-4-14 (1)(B) and (C), which are applicable to the facility's combustion sources, account for all of the blast furnace gas that the facility can produce. Therefore, IDEM states, a limit on the flare is unnecessary to protect the NAAQS. Although the company provided evidence that recent gas production rates have kept the facility well within its SIP emission limits, IDEM has not provided sufficient information to EPA to confirm the company's maximum capacity for producing either blast furnace gas or coke oven gas. The coke oven gas production capacity is relevant because many of the stoves and boilers are able to use both fuels, and the 1988 analysis modeled the combustion units as using both fuels together in specific ratios. The facility does not store either gas, so the gases must be combusted as they are produced. IDEM did not provide EPA with any information regarding the amount of flaring that actually occurred during the data years. Regardless, the flare limit acts to address the sulfur content of the blast furnace gas, rather than to limit the amount of time the flare operates, or how much gas it combusts in total. If the flare limit is removed, then ArcelorMittal could produce and use blast furnace gas with sulfur content greater than 0.07 lbs/mmBtu. If ArcelorMittal does so, and sends some of this gas to the flare, the higher sulfur gas could lead to

increased ambient impacts from the flare which would not be covered by the 1989 modeling.

A proposed SIP "must demonstrate that the measures, rules, and regulations contained in it are adequate to provide for the timely attainment and maintenance of the national standard that it implements." *Montana Sulphur & Chemical Co. v. EPA*, 666 F.3d 1174, 1189 (9th Cir. 2012). Courts have also recognized the importance of including numerical emission limits in SIPs for flares. In the *Montana Sulphur* case, the United States Court of Appeals for the Ninth Circuit affirmed this concept, noting that flare emissions "can affect attainment, and limits on them reasonably can be required, particularly where the state has relied on such limits to demonstrate attainment." *Id.*

In conclusion, EPA disagrees with IDEM's assertion that ArcelorMittal's blast furnace gas flare limit is redundant, unnecessary, or that its removal would not result in or allow an increase in actual SO_2 emissions. The revised rule does not adequately address the potential for variability in blast furnace gas sulfur content, which could affect the validity of the emission rates used in the existing attainment demonstration, thus undermining the SIP's ability to ensure protection of the SO_2 NAAQS. EPA believes that the revised rule does not satisfy the requirements for approval under section 110(l) of the CAA.

IV. What action is EPA taking?

For the reasons discussed above, EPA is proposing to disapprove Indiana's December 10, 2009, submittal requesting a SIP revision to remove the SO_2 emission limit on the blast furnace gas flare at ArcelorMittal Burns Harbor in Porter County.

V. Statutory and Executive Order Reviews.

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the CAA and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve State choices, provided that they meet the criteria of the CAA. Accordingly, this action merely approves State law as meeting Federal requirements and does not impose additional requirements beyond those imposed by State law.

Executive Order 12866: Regulatory Planning and Review

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a "significant regulatory action" and, therefore, is not subject to review under the Executive Order.

Paperwork Reduction Act

This action does not impose an information collection burden under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 et seq, because this proposed SIP disapproval under section 110 and subchapter I, part D of the CAA will not in-and-of itself create any new information collection burdens but simply

disapproves certain State requirements for inclusion into the SIP. Burden is defined at 5 CFR 1320.3(b).

Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small governmental jurisdictions. For purposes of assessing the impacts of today's rule on small entities, small entity is defined as: (1) a small business as defined by the Small Business Administration's (SBA) regulations at 13 CFR 121.201; (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.

After considering the economic impacts of today's proposed rule on small entities, I certify that this action will not have a significant impact on a substantial number of small entities. This rule does not impose any requirements or create impacts on small entities. This proposed SIP disapproval under section 110

and subchapter I, part D of the CAA will not in-and-of itself create any new requirements but simply disapproves certain State requirements for inclusion into the SIP. Accordingly, it affords no opportunity for EPA to fashion for small entities less burdensome compliance or reporting requirements or timetables or exemptions from all or part of the rule. The fact that the CAA prescribes that various consequences (e.g., higher offset requirements) may or will flow from this disapproval does not mean that EPA either can or must conduct a regulatory flexibility analysis for this action. Therefore, this action will not have a significant economic impact on a substantial number of small entities.

We continue to be interested in the potential impacts of this proposed rule on small entities and welcome comments on issues related to such impacts.

Unfunded Mandates Reform Act

This action contains no Federal mandates under the provisions of Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), 2 U.S.C. 1531-1538 for State, local, or tribal governments or the private sector." EPA has determined that the proposed disapproval action does not include a Federal mandate that may result in estimated costs of $100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector. This action proposes to disapprove pre-

existing requirements under State or local law, and imposes no new requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action.

Executive Order 13132: Federalism

Executive Order 13132, entitled "Federalism" (64 FR 43255, August 10, 1999), requires EPA to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications." "Policies that have federalism implications" is defined in the Executive Order to include regulations that have "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government."

This action does not have federalism implications. It will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, because it merely disapproves certain State requirements for inclusion into the SIP and does not alter the relationship or the distribution of power and responsibilities established in the CAA. Thus, Executive Order 13132 does not apply to this action.

Executive Order 13175: Consultation and Coordination With Indian Tribal Governments

This action does not have tribal implications, as specified in Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP EPA is proposing to disapprove would not apply in Indian country located in the State, and EPA notes that it will not impose substantial direct costs on tribal governments or preempt tribal law. Thus, Executive Order 13175 does not apply to this action.

Executive Order 13045: Protection of Children From Environmental Health and Safety Risks

EPA interprets Executive Order 13045 (62 FR 19885, April 23, 1997) as applying only to those regulatory actions that concern health or safety risks, such that the analysis required under section 5-501 of the Executive Order has the potential to influence the regulation. This action is not subject to Executive Order 13045 because it because it is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997).This proposed SIP disapproval under section 110 and subchapter I, part D of the CAA will not in-and-of itself create any new regulations but simply disapproves certain State requirements for inclusion into the SIP.

Executive Order 13211: Actions That Significantly Affect Energy Supply, Distribution, or Use

This action is not subject to Executive Order 13211 (66 FR 28355, May 22, 2001) because it is not a significant regulatory action under Executive Order 12866.

National Technology Transfer Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 ("NTTAA"), Public Law 104-113, section 12(d) (15 U.S.C. 272 note) directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards.

EPA believes that this action is not subject to requirements of Section 12(d) of NTTAA because application of those requirements would be inconsistent with the CAA.

Executive Order 12898: Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations

Executive Order 12898 (59 FR 7629 (Feb. 16, 1994)) establishes Federal executive policy on environmental justice.

Its main provision directs Federal agencies, to the greatest extent practicable and permitted by law, to make environmental justice part of their mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of their programs, policies, and activities on minority populations and low-income populations in the United States.

EPA lacks the discretionary authority to address environmental justice in this proposed action. In reviewing SIP submissions, EPA's role is to approve or disapprove State choices, based on the criteria of the CAA. Accordingly, this action merely proposes to disapproves certain State requirements for inclusion into the SIP under section 110 and subchapter I, part D of the CAA and will not in-and-of itself create any new requirements. Accordingly, it does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Intergovernmental relations, Sulfur oxides.

Dated: March 8, 2013

Susan Hedman,
Regional Administrator, Region 5.

[FR Doc. 2013-06419 Filed 03/19/2013 at 8:45 am; Publication Date: 03/20/2013]